

Supreme Court, U. S.  
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**In the Supreme Court of the United States**

OCTOBER TERM, 1976

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**No. 76-397**

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ALLRIGHT MISSOURI, INC., PHIL JACOBS BUILDING  
CORPORATION AND JOSEPH D. CASSATA AND  
ANNA MARIE CASSATA,

*Petitioners,*

vs.

CIVIC PLAZA REDEVELOPMENT CORPORATION,  
THE CITY OF KANSAS CITY, MISSOURI, AND  
JOHN DANFORTH, ATTORNEY GENERAL OF THE  
STATE OF MISSOURI,

*Defendants.*

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**BRIEF OF DEFENDANT-RESPONDENT, CIVIC  
PLAZA REDEVELOPMENT CORPORATION IN  
OPPOSITION TO PETITION FOR WRIT  
OF CERTIORARI**

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**REASONS FOR DENYING THE WRIT**

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**ARGUMENT**

**The Supreme Court of Missouri has not decided a Federal question; Petitioners' contention of violation of Fourteenth Amendment rights is not in accord with applicable decisions of this Court.**

Petitioners contend that they should be protected from arbitrary and unreasonable legislative actions which deprive them of their property rights. However, they failed to prove that the City Council of Kansas City, Missouri

was arbitrary and unreasonable when it declared the area in question blighted. As set forth at page 8 of Petitioners' Petition "\* \* \* parties seeking to void a municipal ordinance must carry the burden of proof \* \* \* that burden of proof is a heavy one and requires a showing upon clear and cogent evidence that a legislative body was arbitrary and unreasonable in using its determination." The Missouri Supreme Court stated "Allright (Petitioners) failed to meet its burden of proof." Appendix A37.

The Missouri Supreme Court, en banc, at A36, stated the law as it applies to review of legislative determinations, to-wit:

"The parties agree that the applicable law is: in determining whether an area is blighted, the City Council acts in its legislative capacity; that, in this case, judicial review is limited to whether the legislative determination was arbitrary, there being no contention that such determination was induced by fraud, collusion or bad faith. *Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corporation*, 518 S.W.2d 11, 15(1) (Mo. 1974); *Annbar Associates v. West Side Redevelopment Corporation*, 397 S.W.2d 635, 650(9) (Mo. banc 1965); *State on inf. of Dalton v. Land Clearance for Redevelopment Authority of Kansas City*, 270 S.W.2d 44, 52(2) (Mo. banc. 1954).

The issue of whether a legislative determination of blight is arbitrary turns upon the facts of each case. And, the burden of proving that it is arbitrary is upon the party so charging. *Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corporation*, supra (518 S.W.2d at 16).

The Court said in *Parking Systems, Inc.*, supra, that in determining whether this burden of proof has

been met, "\* \* \* it must be kept in mind that the courts cannot interfere with a discretionary exercise of judgment in determining a condition of blight in a given area \* \* \* and \* \* \* (u)nless it should appear that the conclusion of the City's legislative body in the respect in issue \* \* \* is clearly arbitrary \* \* \*, we cannot substitute our opinion for that of the City's \* \* \*. If the City's action \* \* \* is reasonably doubtful or even fairly debatable' we cannot substitute our opinion for that of the City Council. 518 S.W.2d at 16."

Notwithstanding the above established principle of law, Petitioners contend that they received no protection under the law and that their Fourteenth Amendment Rights were violated. Nevertheless, Petitioners failed to show by clear and cogent evidence that the City Council's actions were arbitrary and unreasonable.

Petitioners, at page 7, state, "As can be seen from the appellate opinions attached to this Petition, only the barest minimum evidence supporting the redevelopment project was presented to the City Council of Kansas City, Missouri, yet when tested by the standard of review used by the Missouri Supreme Court, minimal evidence was held sufficient to uphold the legislative finding."

Petitioners use "barest minimum of evidence" and "minimal evidence", and yet have failed to overcome the evidence and carry their burden of proof.

With regard to questions of evidence, the Missouri Supreme Court, however, stated at A34: "As indicated, the evidence available and considered by the City Council in making its determination that the area was blighted and that Civic Plaza's proposed project for redevelopment thereof should be approved was *voluminous*." (Emphasis ours).

At page 11, Petitioners state, "The Supreme Court of Missouri, in its opinions in *Parking Systems*, supra, and in this case, has stated that any *threadbare* evidence regarding blight is sufficient if a reasonably doubtful or fairly debatable question of fact arises." It must be noted that after careful review of said cases, we have found *no* such references to the sufficiency of "*threadbare evidence*" nor did the Supreme Court of Missouri even mention "*threadbare evidence*" in its opinion. (Emphasis ours).

The Missouri Supreme Court *did not* affirm the legislative determination of blight on "bare minimum evidence", "minimal evidence" or "threadbare evidence." To the contrary, it stated that if the action is reasonably doubtful or even fairly debatable, it will not substitute its opinion for that of the City Council. The Petitioners could not and did not prove that the City Council action was *not* reasonably doubtful or *not* even fairly debatable. The Petitioners failed to prove that the City Council action was clearly arbitrary and unreasonable. (Emphasis ours).

The Petitioners' Constitutional rights were not invaded nor did the Supreme Court of Missouri err in its judgment in this case.

Petitioners refer to *Annbar Associates v. Westside Redevelopment Corporation*, 397 S.W.2d 635 (Mo. en banc 1965) in its Petition (page 7) which case is also cited by the Missouri Supreme Court at A36. The *Annbar* case, involving Urban Redevelopment, set forth the scope of review of a legislative body's actions by the Courts. The *Annbar* case was later appealed to this Court. The motion to dismiss was granted and the appeal was dismissed for want of a substantial federal question in 385 U.S. 5, decided October 10, 1966.

This case, as the *Annbar* case, supra, does not involve a substantial federal question.

Petitioner cites no grounds for invoking this Court's discretion to grant a writ of certiorari.

It is respectfully submitted the petition should be denied.

### CONCLUSION

For the reasons and authorities cited above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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